

used as if taken before an examiner; or if the court shall have so ordered, such evidence shall be reduced to writing by counsel in the same manner as bills of exceptions now are at common law, and after the same shall have been signed by the judge or judges before whom the testimony was taken, shall, with the documentary proof at the same time offered and admitted, be filed as part of the proceedings to be used as if taken before an examiner.

If an appeal is proposed to be taken, the proper practice under this section is either to file written exceptions, as is done when testimony is taken before an examiner, or the rulings should be presented by a bill of exceptions or certificate. The mere stenographic record that a question was objected to, ruled inadmissible, and exception noted, is not sufficient. *Lemmert v. Lemmert*, 103 Md. 65.

The court may by special rule or general order direct that when testimony is upon objection ruled inadmissible, it shall only be incorporated in the record upon appeal at the request and expense of the party propounding the questions. Proper and improper practice under this section. Rules governing the production of evidence in equity. *Schnepe v. Schnepe*, 108 Md. 146.

1904, art. 16, sec. 244. 1888, art. 16, sec. 226. Rule 46.

262. Upon any petition, motion or other interlocutory application for the hearing and determination of which evidence may be required, the court or judge thereof may order testimony to be taken before an examiner, or before a justice of the peace, upon such notice, and in such manner as the court or judge may think proper to direct, to be used at the hearing of such matter.

Ibid. sec. 245. 1888, art. 16, sec. 227. 1860, art. 16, sec. 141. 1826, ch. 222, sec. 1.

263. All commissions which shall be issued to take testimony in causes pending in any court of equity of this State shall be issued and directed to two persons to be named and appointed by the said court, or the judge thereof.

See notes to sec. 264.

As to the issue of commissions by the clerks of the courts having jurisdiction, see art. 17, sec. 33.

Ibid. sec. 246. 1888, art. 16, sec. 228. 1860, art. 16, sec. 142. 1795, ch. 88, sec. 4. 1799, ch. 79, sec. 6. 1829, ch. 159. 1840, ch. 109, sec. 5. 1852, ch. 173, sec. 2.

264. A commission to take testimony may issue to one person with consent of the parties.

If a defendant receives notice of the name of plaintiff's commissioner, his neglect to name another commissioner is a waiver of his right to have two commissioners. *Billingslea v. Smith*, 77 Md. 516; *Sewell v. Gardner*, 48 Md. 183.

Commissioners regularly appointed under this and the preceding section, are for this purpose as much ministerial officers of the court as if they had been nominated in a commission in ancient form. *Winder v. Diffenderffer*, 2 Bl. 196.

Held that the 27th rule of the court of common pleas of Baltimore city could not be construed to contravene sections 263, 264 and 265. *Sewell v. Gardner*, 48 Md. 182.

Ibid. sec. 247. 1888, art. 16, sec. 229. 1860, art. 16, sec. 143. 1841, ch. 22, sec. 6. 1842, ch. 229, sec. 6. 1878, ch. 202.

265. Where a commission to take testimony in chancery shall issue to two commissioners, only one shall act on the same day, unless both